

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-013485

10/12/2011

HONORABLE HUGH HEGYI

CLERK OF THE COURT
K. Ballard
Deputy

CANYON PHYSICIANS II INC

JOSEPH A SCHENK

v.

LESLIE EDISON, et al.

ROBERT L EARLE

TRIAL MANAGEMENT CONFERENCE
DAY 2

Courtroom: ECB-611

12:52 p.m. Trial Management Conference continues from October 11, 2011. Plaintiff/Counterdefendant Canyon Physicians II, Inc. and Counterdefendants Behcon, Inc., Dennis Pickering, Robert L. Pickering, Susan Pickering, and Timothy J. Pickering are represented by Counsel Joseph A. Schenk. With Mr. Schenk is Stephanie Loquvam, a law clerk from Mr. Schenk's office. Defendant/Counterclaimant Leslie Edison is represented by Counsel Robert L. Earle.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

The Court addresses Defendant's counsel regarding his late arrival today, his history of the same, his failure to appear at prior hearings, and his failure to file pleadings timely in this case.

Court and counsel discuss the same. During the course of the discussion, counsel clarify that Plaintiff's prior reference to Defendant's failure to appear for oral argument regarding a

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summary judgment motion which resulted in sanctions being awarded actually occurred in the companion case and not this one.

Additionally, Plaintiff's counsel advises the Court of continued difficulty in receiving Defendant's portions of the Joint Pretrial Statement which has prevented the filing of the document as requested by the Court as of this time.

The Court admonishes Defendant's counsel that if he fails to timely appear during the jury trial, the Court may enter default against Defendant in this matter. Additionally, counsel shall ensure that he is properly and timely filing all documents with the Court.

IT IS ORDERED Defendant's counsel shall immediately acquire the ability to convert documents into a Word format and to email them.

Discussion is held regarding the issues to be tried in this matter. Based thereon, the Court orders the parties to submit simultaneous briefs to the Court no later than noon on October 13, 2011 as to whether or not fraud needs to be pled with particularity when it is an affirmative defense.

Discussion continues regarding the issues to be tried in the case.

Plaintiff's counsel provides the Court with a case citation regarding whether fraud needs to be pled with particularity when it is an affirmative defense.

2:19 p.m. Court stands at recess.

2:31 p.m. Court reconvenes with respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

The Court advises counsel that it conducted research during the break regarding fraud.

The Court finds that the issue as to whether the Plaintiff engaged in fraud, either toward the Defendant or third parties, is not properly an issue in this matter for the reasons stated on the record, and evidence relating thereto will not be allowed for that purpose.

As to Defendant's contentions that this relates to her claim of breach of covenant of good faith and fair dealing, the Court finds that her allegations of good faith and fair dealing have not been breached by the Plaintiff, relate solely to her contentions that the Plaintiff violated its contractual obligations, and do not extend to fraud to third parties.

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Based upon the foregoing, the Court asks that counsel confer after today's conference in an attempt to narrow the witnesses and exhibits in this matter.

Oral argument is presented on Defendant's September 8, 2011 Motions in Limine.

IT IS ORDERED denying the Motions in Limine without prejudice to Defendant raising the issues at trial, if necessary, for the reasons set forth on the record.

The Court advises counsel that if all parties believe it may be beneficial, the Court will confer with other Judges regarding their availability to conduct a settlement conference in this matter. If counsel are interested in pursuing such a conference, counsel shall contact the Court's Judicial Assistant at their earliest convenience.

The Court advises counsel that a set of preliminary jury instructions will be provided to them for their review on the morning of trial.

IT IS ORDERED counsel are to appear at 9:15 a.m. on October 18, 2011 to review the instructions and discuss any remaining issues before jury selection commences.

Plaintiff's counsel addresses the Court regarding a scheduling conflict regarding one of Plaintiff's witness, Dan Reis.

On the parties' agreement, Mr. Reis may be taken out of order during Defendant's case.

Plaintiff's counsel addresses the Court regarding outstanding objections to Dr. Edison's deposition testimony. In that regard, a copy of the transcript is provided to the Court for review.

Based upon the Court's earlier findings with regard to trial issues,

IT IS ORDERED vacating the order directing counsel to submit bench memos by noon on October 13, 2011.

Counsel are instructed to be prepared to address disclosure objections quickly during trial and to have all of their disclosure statements available to assist with the same.

Defendant's counsel provides the Court with case citations regarding the relevancy of motive for breach of contract.

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Defendant's counsel requests that the Court consider and issue a ruling with regard to Defendant's Motion to Exclude, which was addressed during the October 11, 2011 conference.

The Court advises counsel that it will consider the late-filed pleadings by Defendant only if the Court has time to do so prior to the trial date.

3:15 p.m. Matter concludes.

LATER:

Counsel having provided the Court with a copy of Defendant's Requested Voir Dire,

IT IS ORDERED directing the courtroom clerk to file the copy as the original in this matter.

FILED: Defendant/Counterclaimant's Requested Voir Dire

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.